

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

JENNY EBERLE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05 CV 30
)	
)	
THE PRUDENTIAL INSURANCE)	
COMPANY OF AMERICA,)	
)	
Defendant)	

OPINION and ORDER

This matter is before the court on the Motion to Compel filed by the plaintiff, Jenny Eberle, on November 9, 2005 and the Motion to Quash Plaintiff Jenny Eberle's Subpoena Directed at Purdue University Pursuant to Fed. R. Civ. P. 45(C)(3)(a) and (b) filed by the defendant, Prudential Insurance, on November 11, 2005.

Neither of the motions before this court contain a Local Rule 37.1 certification or any clear indication that the parties attempted to have a meaningful conference to settle their discovery dispute before seeking court intervention. In addition, the parties' briefing focuses on the substantive merits of this case, such as whether the plaintiff has standing to bring suit, and has provided little case support on the specific issue of discovery. *See, e.g.,* Def. Resp. Mot. Compel, pg. 12.

Finally, the defendant objects to certain discovery on the basis of privilege, but the defendant does not appear to have provided a privilege log to the plaintiff and none has been

provided to the court. Contrary to the defendant's position, Federal Rule of Civil Procedure 26(b)(4)(C) places the burden on the party opposing discovery on the basis of privilege to support that claim. Thus, the plaintiff has not "waived" her right to certain discovery simply by declining to enter an agreed protective order covering the information she seeks.

For the foregoing reasons, the motion to compel and motion to quash subpoena are **DENIED WITHOUT PREJUDICE**. After the parties have conferred as required by Local Rule 37.1, the parties may refile their motions, if necessary, consistent with this Opinion.

ENTERED this 14 December, 2005

s/ ANDREW P. RODOVICH
United States Magistrate Judge